

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

HEALTH CARE REFORM REVIEW COMMITTEE

Thursday and Friday, October 20-21, 2011
Roughrider Room, State Capitol
Bismarck, North Dakota

Representative George J. Keiser, Chairman, called the meeting to order at 9:00 a.m.

Members present: Representatives George J. Keiser, Donald L. Clark, Robert Frantsvog, Nancy Johnson, Lee Kaldor, Jim Kasper, Gary Kreidt, Lisa Meier, Ralph Metcalf, Marvin E. Nelson, Karen M. Rohr, Robin Weisz; Senators Spencer D. Berry, Jerry Klein, Judy Lee, Tim Mathern

Members absent: Representatives Eliot Glassheim, Lonny B. Winrich; Senator Dick Dever

Others present: See [Appendix A](#)

It was moved by Representative Kreidt, seconded by Representative Frantsvog, and carried on a voice vote that the minutes of the October 6, 2011, meeting be approved as distributed.

CHAIRMAN'S COMMENTS

Chairman Keiser thanked the committee members and stakeholders for their participation in the committee's activities. He said the committee meeting is being broadcast on the Internet and perhaps on local cable channels. He said the committee is scheduled to meet for a full day on Thursday, and if there is additional committee work remaining the committee will recess and continue its work on Friday morning. He said it is imperative the committee complete the work necessary to make recommendations to the Legislative Management in preparation for the special session scheduled to begin Monday, November 7, 2011.

Chairman Keiser distributed a timeline ([Appendix B](#)) of health benefit exchange alternatives he created for the committee members to consider. He said that the federal Affordable Care Act (ACA) is the law of the land, and states are put in the position of implementation. However, he said, there are too many variables for states to predict every possible outcome. For example, he said, the ruling of the United States Supreme Court could impact the implementation of the ACA, as could the outcome of the 2012 presidential and congressional elections.

Chairman Keiser said he expects if the state chooses to have the federal government administer the state's health benefit exchange, the federal government likely will take a "one size fits all" approach versus the individualized approach the state would take if the state administered the health benefit exchange.

Chairman Keiser said funding is an important element for the committee to consider in determining how to move forward with the health benefit exchange. He said he is concerned that if the federal government administers the exchange and the exchange is transitioned to state administration at a later date, the state may be required to keep elements of the federally administered exchange.

Representative Kreidt said he would like to know what the impact would be if the United States Supreme Court determines a major portion of the ACA is null and void. He said if the mandatory insurance provision of the ACA is struck down, the ACA will no longer be budget-neutral. He said he questions why the Legislative Assembly feels rushed to address the health benefit exchange at the upcoming special session, as he thinks the health benefit exchange issues can be addressed at the 2013 regular session.

In response to Representative Kreidt's comments, Chairman Keiser said he thinks had it not been for the special session designed to address redistricting, the legislative leadership would have ensured there were adequate legislative days to call for a special session in order to deal with the health benefit exchange issues. He said that the committee has the option of not recommending a health benefit exchange bill draft, and even if the committee does recommend a health benefit exchange bill draft, the Legislative Assembly may choose not to pass the legislation.

Senator Lee said the state's information technology staff is being pushed to complete the medical assistance and children's health insurance program (CHIP) eligibility system. She said if the committee's actions hinder this process, it will be a real hardship on the Department of Human Services.

Senator Lee said that during the 2011 legislative session, there was an affirmative decision to deal with several issues, such as the medical assistance and CHIPs eligibility system, during the upcoming special session.

Senator Mathern said he hopes the committee does not act in a defensive manner. He said the role of the Legislative Assembly should be to ensure we have affordable health care for all, regardless of the ACA. He said the ACA is merely the vehicle we are using to assist in reaching this goal.

Chairman Keiser said if the state expects to receive any waivers related to the health benefit exchange, the state will need to show a good-faith

effort, and the federal government is going to have to be consistent in granting these waivers to states.

INSURANCE DEPARTMENT

Chairman Keiser called on Ms. Melissa Hauer, General Counsel, Insurance Department, to provide an update of the status of states' implementation of the health benefit exchange provisions of the ACA and provide followup information requested at the previous meeting. Ms. Hauer distributed a copy ([Appendix C](#)) of her written testimony, including an update on federal activities, an update on the activities of the contractor--HTMS; and comments regarding the committee's health benefit exchange bill draft and external review bill draft.

BILL DRAFT REVIEW

Chairman Keiser said the committee will spend the remainder of the meeting reviewing the committee bill drafts relating to external review and the health benefit exchange. He invited interested persons to comment as the committee conducts this review.

External Review Bill Drafts

Committee counsel reviewed three bill drafts relating to health insurance external review procedures. She said one bill draft is based on 2011 House Bill No. 1127 as introduced [[11.0819.01000](#)], and the other two bill drafts [[11.0820.01000](#) and [11.0822.01000](#)] are based on language submitted by Blue Cross Blue Shield of North Dakota and are identical to each other except for how they address what entity is charged with assigning an independent review organization.

Representative Kaldor said although these three bill drafts are exempt from the two-reading rule because they are drafted by the Legislative Council, he does not support recommending introduction in the special session because there has not been adequate time for review.

Senator Lee said she has been in touch with the federal Department of Health and Human Services (HHS) regarding the ACA's external review requirements and the Insurance Commissioner's approach to 24/7 coverage, fines, and filing fees. She said she thinks the committee should be careful of how it moves forward on this matter, as the Insurance Commissioner's bill--House Bill No. 1127--addressing the external review matter was hoghoused during the 2011 legislative session.

In response to a question from Representative Nelson, Ms. Hauer said the legislative history of House Bill No. 1127 is interesting in that although the introduced version was ultimately defeated, it initially had come out of committee with a do pass recommendation.

Representative Keiser said during the 2011 legislative session the House of Representatives' intention was to go no further than the ACA required.

Ms. Lisa Carlson, Sanford Health, Sioux Falls, South Dakota, stated the issue of external review is relevant to the health benefit exchange because in 2014, all health plans will need to be certified and will need to meet the ACA requirements for external and internal review. She said self-funded (ERISA) plans are already required to meet these requirements.

In response to a question from Senator Mathern, Ms. Carlson said regardless of whether the state addresses these issues, health carriers will be required to meet this federal law by 2014. She said if the state fails to act, the state will defer to the federal government.

Ms. Carlson said that Sanford supported House Bill No. 1127 as introduced. She said the 24/7 urgent review requirement clause of the ACA over which the carriers initially took issue has since been modified to address the carriers' concerns.

In response to a question from Representative Frantsvog, Ms. Carlson said she is not certain whether there are any independent review organizations in North Dakota.

In response to a question from Senator Berry, Ms. Carlson said if there is a night or weekend review issue, although the patient is faced with making a decision of whether to continue treatment, the reality is that most patients do what the physician directs.

In response to a question from Representative Kaldor, Ms. Carlson said she believes the 24/7 issue is addressed in the bill draft based on House Bill No. 1127 as introduced, by requiring a 72-hour response. She said she thinks this language would meet the requirements of the ACA.

Senator Lee said it appears on page 66, lines 4 through 6, of the bill draft based on House Bill No. 1127 as introduced, the 72-hour issue has not been addressed.

Ms. Hauer said while House Bill No. 1127 was making its way through the session, there were proposed amendments that resulted from the Insurance Commissioner working with the insurance carriers and these proposed amendments would have addressed the 24/7 issue; however, the bill draft before the committee does not reflect these proposed changes.

Ms. Hauer distributed a document ([Appendix D](#)) that she prepared to reflect how the two bill drafts based on language submitted by Blue Cross Blue Shield appear to address the 16 minimum consumer protection standards of the federal law. In her document, "Option 1" refers to [11.0820.01000](#), and "Option 2" refers to [11.0822.01000](#). She said the Insurance Commissioner is not taking a position on the committee's three external review bill drafts.

Mr. Rod St. Aubyn, Blue Cross Blue Shield of North Dakota, Fargo, reviewed enrolled House Bill No. 1127. He said the reason the legislature is in the position of addressing this external review issue is because when the federal government determined the state's law is not in compliance with the federal law,

the Insurance Commissioner chose to not appeal that decision.

Mr. St. Aubyn said the reason there are two alternate bill drafts--Option 1 and Option 2--is because it was not clear to Blue Cross Blue Shield whether the federal law required that the Insurance Commissioner or the insurance carrier select the independent review organization. He said he thinks if the bill drafts are missing necessary language in order to comply with the federal requirements, this can be addressed through the administrative rulemaking process.

Senator Berry said if we do not have the necessary information, he suggests we set this aside and deal with it at the end of the meeting.

Chairman Keiser requested that interested parties take time to review the bill drafts. He requested that the Insurance Commissioner work with committee counsel to revise the bill draft based on House Bill No. 1127 as introduced to reflect the amendments that had been proposed during the legislative session and which had been agreed upon by the health insurance carriers.

Health Benefit Exchange Bill Draft

Chairman Keiser called on committee counsel to review the committee bill draft [[11.0806.04000](#) - red/green version] creating a state-administered health benefit exchange. Committee counsel stated the version of the committee bill draft distributed is the color version, which shows the changes to the North Dakota Century Code portions of the bill draft made from the previous version that was reviewed at the October 6, 2011, committee meeting. Additionally, she said, although the appropriations and other special clauses at the end of the bill draft have been revised from the previous version of the bill draft, these changes are not reflected in color because they are not Century Code changes.

Representative Kasper said he is concerned that the bill draft appears to give the Health Benefit Exchange Board the authority to set insurance premium tax rates, whereas he thinks it is the board's duty to provide the health benefit exchange's budget and the Insurance Commissioner's duty to set premium insurance rates.

Senator Lee said it is interesting to note the Comprehensive Health Association of North Dakota (CHAND) sets assessment rates.

Ms. Maggie Anderson, Director, Medical Services Division, Department of Human Services, addressed concerns raised at the previous meeting regarding the definition of "qualified individual" and the reference to aliens on page 5 of the bill draft. She distributed written material ([Appendix E](#)).

In response to a question from Senator Berry, Ms. Anderson said the Department of Human Services has limited information on the number of aliens in North Dakota; however, she said, the 2010 census data provides there were 10,449 aliens in the state. Additionally, medical assistance counted approximately 2,613 qualified aliens in the state.

In response to a question from Senator Mathern, Ms. Anderson said the definition of "qualified alien" in the bill draft appears to be consistent with the language of the National Association of Insurance Commissioners model Act. She said it appears to also track the language of the ACA.

It was moved by Senator Lee, seconded by Representative Kasper, and carried on a voice vote that the bill draft be revised on page 6, line 18, to clarify the health benefit exchange does not establish eligibility requirements for medical assistance and CHIP.

It was moved by Senator Lee, seconded by Representative Weisz, and carried on a voice vote that the bill draft be revised on page 13, line 13, to clarify health benefit exchange does not establish eligibility requirements for medical assistance and CHIP.

Ms. Hauer stated the Insurance Commissioner does not support the bill draft language that directs him to set effective dates. She suggested the bill draft identify a different person to set these dates, such as the Health Benefit Exchange Board, Office of Management and Budget, or Governor.

Representative Kasper said if the ACA application dates change, the state needs to have a state actor who is able to respond. He said the bill does not have to have the Insurance Commissioner set these dates, but it does have to identify a state actor. However, he said, the Insurance Commissioner is an expert in this area and is the logical choice.

Representative Keiser suggested the Insurance Commissioner could set these dates in consultation with another person; however, he said, he agrees the Insurance Commissioner is the state's expert on the ACA.

In response to a question from Representative Kaldor, committee counsel said the bill draft language would require the implementation dates to be consistent with the federal law; however, if the dates in the federal law change, we would need a state actor to respond to those dates in order to avoid an unconstitutional delegation of legislative authority.

Senator Mathern said he supports adding "in consultation" language.

In response to a question from Representative Frantsvog, Representative Keiser said if consultation language were added, it would still give the Insurance Commissioner the authority to set the date and it would not require a majority vote.

It was moved by Representative Weisz and seconded by Senator Mathern that the bill draft be revised to provide the director of the Office of Management and Budget set dates.

Representative Kasper and Senator Klein stated they preferred having the Insurance Commissioner set the dates because this is an insurance matter.

The motion carried on a roll call vote. Representatives Keiser, Johnson, Kaldor, Metcalf, Nelson, and Weisz and Senators Lee and Mathern voted "aye." Representatives Clark, Frantsvog,

Kasper, Kreidt, and Rohr and Senators Berry and Klein voted "nay."

Ms. Pam Sharp, Director, Office of Management and Budget, voiced concern that page 7, line 2, provides the Health Benefit Exchange Division is charged with funding the health benefit exchange.

It was moved by Senator Mathern, seconded by Representative Johnson, and carried on a voice vote that page 7, line 2, of the bill draft be revised to remove "and fund."

Senator Mathern distributed a memorandum ([Appendix F](#)) of proposed revisions to the committee's health benefit exchange bill draft.

It was moved by Senator Mathern and seconded by Representative Metcalf that the health benefit exchange bill draft be revised to change the health benefit exchange board membership in accordance with his memorandum.

Ms. Rebecca Ternes, Deputy Insurance Commissioner, Insurance Department, reviewed the HHS regulations addressing health benefit exchange governance. She said the preamble suggests the majority should be consumers; however, the regulations provide the majority may not be insurers or industry representatives.

Mr. Josh Askvig, AARP North Dakota, testified in support of a majority of the board members representing consumers.

In response to a question from Representative Kasper, Ms. Ternes said the regulation is likely the standard HHS would consider in certifying a state's health benefit exchange.

Senator Lee said she is opposed to making the board membership language too specific and too restrictive. She said the Governor has informed her that he would appreciate the latitude to select board members as he sees appropriate.

Ms. Carlson reviewed Sanford's consumer majority board membership. She said even with a consumer majority, the Sanford board is very finance-heavy. She said she supports a board that has the necessary expertise in risk adjustment, risk corridors, and reinsurance.

Representative Kaldor said he does not think the proposed revisions negatively impact the issues Ms. Carlson raises.

Ms. Carlson said she would view the limitation of a single health carrier as problematic in that it would limit the resources of the board. She said the proposed revisions would allow for more than a single health insurer.

Mr. St. Aubyn reviewed the Blue Cross Blue Shield Board membership.

In response to a question from Representative Kaldor, Mr. St. Aubyn agreed that allowing more than one representative of the insurance industry would help to provide critical expertise to the board.

Senator Mathern said the proposed board membership revision would retain the expertise requirements in the current version of the bill draft.

The motion failed on a roll call vote.

Representatives Kaldor, Metcalf, and Nelson and Senator Mathern voted "aye." Representatives Keiser, Clark, Frantsvog, Johnson, Kasper, Kreidt, Meier, Rohr, and Weisz and Senators Berry, Klein, and Lee voted "nay."

Senator Lee said in discussing options for the health benefit exchange board membership there are several options, including increasing the insurance industry representation and removing the medical provider member or instead simplifying the membership by providing for three consumer representatives, one small employer representative, two insurers, one health care industry representative, and two other members appointed by the Governor.

Representative Kasper and Senator Klein said they would not support a board membership that did not clearly provide for representation of agents and brokers.

Mr. John Vastag, Sanford Health, Fargo, said he would support Senator Lee's second option.

Mr. Norbert Mayer, National Association of Insurance Financial Advisors - North Dakota, stated a primary goal of the health benefit exchange will be to get people enrolled. Additionally, agents and brokers represent consumer interests and, therefore, it is important to keep agents and brokers on the board.

It was moved by Representative Weisz, seconded by Representative Kasper, and carried on a roll call vote that the health benefit exchange bill draft be revised to provide for three consumer representatives, one small employer representative, two health insurance industry representatives, one agent/broker, one health care professional, and one at-large member.

Representatives Keiser, Frantsvog, Johnson, Kasper, Kreidt, Meier, Metcalf, Nelson, Rohr, and Weisz and Senators Klein and Lee voted "aye." Representatives Clark and Kaldor and Senators Berry and Mathern voted "nay."

Representative Keiser said the new language at the top of page 8 of the bill draft regarding board membership was not addressed at the last meeting but was included to address the concern of any single entity having too much sway on the health benefit exchange board.

Mr. St. Aubyn testified in support of the language. He said he has some reservation about limiting it to nonconsumer members, and he suggests it be expanded to apply to all board members.

In response to a question from Representative Nelson, committee counsel said the bill draft does not define the term "business entity"; however, there are examples in the Century Code, such as Sections 10-01.1-02, 26.1-26-02, and 51-22-01, which may provide guidance.

It was moved by Representative Kasper, seconded by Senator Berry, and carried on a voice vote to revise the new language on page 8, lines 1 through 3, of the bill draft to apply to all board members.

It was moved by Representative Kasper and seconded by Senator Lee that the bill draft be revised to remove the nomination process for consumer members.

Senator Mathern said the industry representatives on the board have a mechanism to organize, and he would like the consumer representative to have this same advantage.

Representative Kasper said the proposed revisions would not stop consumer organizations from nominating names to the Governor.

The motion carried on a roll call vote. Representatives Keiser, Clark, Frantsvog, Johnson, Kasper, Kreidt, Meier, Rohr, and Weisz and Senators Berry, Klein, and Lee voted "aye." Representatives Kaldor, Metcalf, and Nelson and Senator Mathern voted "nay."

Representative Keiser suggested the committee consider revising the language on page 9, lines 3 through 6, of the bill draft to provide board members receive per diem.

It was moved by Senator Mathern and seconded by Representative Kaldor that the bill draft be revised to provide the health benefit exchange board members receive per diem and reimbursement for travel and lodging at the state rate.

Mr. St. Aubyn expressed concern regarding where the funds will come from to pay board members until the exchange is up and running.

The motion carried on a voice vote.

It was moved by Senator Mathern, seconded by Representative Kreidt, and carried on a voice vote that the bill draft be revised on page 10, line 21, to clarify conflict of interest applies to actual or possible conflicts.

It was moved by Senator Mathern and seconded by Senator Berry that the bill draft be revised on page 10, lines 24 through 27, so the language regarding tribal involvement complies with the requirements of the federal regulations.

Senator Berry said his conversations with others support the requirement that the board consult with all tribes in the state, not just the Indian Affairs Commission.

The motion carried on a voice vote.

In response to a question from Representative Nelson, committee counsel said the bill draft does not address whether members of the advisory groups receive any per diem or reimbursement.

It was moved by Representative Nelson and seconded by Representative Kaldor that the bill draft be revised to authorize the Health Benefit Exchange Board to pay members of advisory groups per diem and reimbursement for travel and lodging.

Representative Kreidt said he does not get paid for serving on advisory groups. He said he would not support payment of advisory group members if there are groups of 200 members.

Senator Berry said it may be wise for the board to distinguish between in-person meetings and telephonic meetings.

Representative Keiser and Senator Klein said they would support addressing this issue during the 2013 legislative session.

Senator Mathern said one reason special interest groups do not participate in the process is that they cannot afford to participate.

The motion carried on a roll call vote. Representatives Keiser, Frantsvog, Johnson, Kaldor, Kasper, Metcalf, and Nelson and Senators Berry and Mathern voted "aye." Representatives Clark, Kreidt, Meier, Rohr, and Weisz and Senator Klein voted "nay."

Chairman Keiser requested that the language in the bill draft clarify board members serving in their ex officio capacity not receive compensation or reimbursement from the health benefit exchange, but legislative members do receive compensation and reimbursement from the health benefit exchange.

It was moved by Representative Kasper, seconded by Senator Berry, and carried on a voice vote that the bill draft be revised to allow 90 days for the board to establish the advisory groups.

It was moved by Representative Kasper and seconded by Senator Berry that the bill draft be revised on page 12, line 20, to limit the duties of the technical advisory group.

Senator Mathern said as a small state we may need to consider ways to make the health benefit exchange work better.

Senator Berry said even if this language is not in the law, the advisory group would still be able to advise regarding this matter.

Mr. Dan Ulmer, Blue Cross Blue Shield North Dakota, Bismarck, testified that under the ACA, by 2016 the state will need to make a decision regarding whether to expand the exchange eligibility to include large employer groups.

The motion failed on a roll call vote. Representatives Clark, Kasper, Kreidt, Meier, and Rohr and Senators Berry and Klein voted "aye." Representatives Keiser, Frantsvog, Johnson, Kaldor, Metcalf, Nelson, and Weisz and Senators Lee and Mathern voted "nay."

Mr. St. Aubyn questioned whether it is actually necessary that the Health Benefit Exchange Division's rules provide a manner of board voting on page 13, line 7, of the bill draft.

Representative Keiser stated when the committee first considered this bill draft, it provided for a nonprofit, freestanding governing entity, not for a state entity and, therefore, some of these rules may be unnecessary.

Ms. Sharp suggested that instead of requiring rules, the division could establish policies and procedures.

It was moved by Representative Kreidt, seconded by Representative Frantsvog, and carried on a voice vote that the bill draft be

revised to provide the board in consultation with the division is charged with establishing policies and procedures.

It was moved by Senator Mathern, seconded by Representative Kaldor, and failed on a roll call vote that the bill draft be revised to provide the health benefit exchange must be fully operational to support the open enrollment period no later than January 1, 2014. Representatives Johnson, Kaldor, Metcalf, and Nelson and Senators Lee and Mathern voted "aye." Representatives Keiser, Clark, Frantsvog, Kasper, Kreidt, Meier, Rohr, and Weisz and Senators Berry and Klein voted "nay."

Representative Keiser distributed a document ([Appendix G](#)) that included a proposed revision to proposed Section 54-66-10, which provides for the navigation office. He said his proposed revision would provide that the Indian Affairs Commission would be a navigator grant recipient.

Senator Mathern reviewed his proposed revisions ([Appendix F](#)) to proposed Section 54-66-10.

It was moved by Senator Mathern and seconded by Representative Nelson that the bill draft be revised to adopt his proposed revisions to the navigation office.

Representative Kasper said job creation and retention is the most important issue today. He said Senator Mathern's proposed revisions would result in a loss of jobs for agents and brokers and, therefore, he resists the motion.

Senator Mathern said under his proposal, navigators would be educated and capable. He said his goal is to get people coverage for health care.

Representative Kasper said agents and brokers are educated and capable. He said Representative Keiser's approach seems adequate.

Representative Keiser said HTMS commented the creation of a state entity to act as a navigator is a very innovative approach.

Mr. Mayer said agents already have in place an education plan to ensure agents are knowledgeable regarding health insurance.

Senator Mathern said he understands Mr. Mayer's position, but this is not limited to good intention. He said we need to have people with a passion and concern regarding their affinity group and who are willing to work hard to seek out those individuals who do not have coverage.

Mr. Mayer said he agrees there are people who are missed and therefore do not have health coverage. He said the agents need to continue to receive education in how to better serve these individuals.

In response to a question from Representative Nelson, Mr. Mayer said in order for a licensed producer to be licensed in North Dakota, that individual needs to have a relationship with an insurance carrier.

Mr. Askvig said he takes issue with agents and brokers serving as navigators.

The motion failed on a voice vote.

It was moved by Representative Kasper, seconded by Senator Klein, and carried on a voice vote that the bill draft be revised to adopt Representative Keiser's proposed amendments to the navigation office.

It was moved by Senator Mathern, seconded by Senator Lee, and carried on a voice vote that the bill draft be revised on page 26, lines 14 through 16, to clarify the Department of Human Services' report relate to funding of the medical assistance-related and CHIP-related exchange activities of the department.

In response to a question from Senator Klein, Ms. Hauer said all insurers are watching to see how states will fund the health benefit exchanges.

Senator Lee said perhaps a portion of the premium tax funds currently being collected should be used to fund the health benefit exchange.

Representative Keiser said he does not support using general fund money to fund the health benefit exchange. He said ultimately the federal money will not be available, and the health benefit exchange is supposed to save money and be self-sustaining.

He said he accepts the position that use of premium tax funds may be unworkable for the Insurance Commissioner and the insurance companies.

Senator Lee said the CHAND program is funded by the insurance companies paying an annual assessment.

Senator Mathern suggested the rate be set by statute and that there be a rebate or refund mechanism built into the system.

Mr. St. Aubyn said a problem with using the premium tax system to fund the health benefit exchange is that some insurers are paying a retaliatory tax rate. He said if North Dakota's premium rate increases, some of those companies will not be paying for the exchange. He suggested an assessment approach so that all the insurance companies have some skin in the exchange.

Representative Weisz commented that because the federal government will be providing the initial funding for the exchange, why not charge the board with proposing a funding mechanism and address this issue in 2013.

Representative Kasper suggested insurers pay an assessment to fund the exchange.

Ms. Ternes said in reviewing the state's plan, HHS will want to know how the state plans on making the exchange self-sustaining.

Ms. Carlson questioned whether the bill would allow the health benefit exchange to collect revenue from advertising and online advertising. She said she would support such authority.

Committee counsel suggested if the committee wants to allow the exchange to collect advertising revenue, the bill draft should be revised to authorize the division to collect those funds.

Representative Kaldor suggested increasing the premium tax rate in order to create initial funding and

then add assessments and user fees to actually support the exchange.

It was moved by Representative Weisz, seconded by Representative Kreidt, and carried on a voice vote that the bill draft be revised to allow the collection of advertising funds and to remove the premium tax language.

Mr. St. Aubyn said the bill draft language regarding rebates and dividends seems unclear.

Representative Keiser said he likes the rebate language in the bill draft. He said he expects the exchange will apply any extra funds to the next year's expected costs. He questioned what would happen if funds collected from individual policyholders would be refunded or rebated to the insurance companies or to the individuals.

It was moved by Representative Frantsvog, seconded by Representative Metcalf, and carried on a voice vote that the bill draft be revised on page 27, lines 8 and 9, to change "must" to "may" as it relates to administrative hearings.

It was moved by Senator Lee, seconded by Senator Mathern, and carried on a voice vote that the bill draft be revised on page 29, lines 8 and 9, to provide the Office of Management and Budget apply for federal exchange establishment grants.

In response to a question from Representative Weisz, Ms. Sharp said under Section 8 of the bill draft, the appropriation to the Information Technology Department reflects the first biennium funding needs to build the eligibility system. She said the remaining funds would remain with the Department of Human Services for use during the 2013-15 biennium.

In response to a question from Representative Kasper, Ms. Sharp said the funds requested for the eligibility system are needed regardless of whether the health benefit exchange is implemented. However, she said, if there is a health benefit exchange the eligibility system will be used as part of the exchange.

Representative Keiser said it is very important to understand the appropriations in Sections 7 and 8 of the bill draft are not related to the ACA's health benefit exchange.

Representative Kasper said he would prefer that the appropriations in Sections 7 and 8 of the bill draft be placed in a separate bill draft.

Senator Lee said the funding request for the eligibility system is a familiar issue for the Appropriations Committees; therefore, she is not concerned about keeping the appropriation in the health benefit exchange bill draft. She said committee members need to educate both chambers regarding this matter.

Representative Keiser distributed proposed revision language regarding the appropriations in Sections 9 and 10 of the bill draft ([Appendix G](#)).

Ms. Lisa Feldner, Chief Information Officer, Information Technology Department, said the department's project under Section 8 of the bill draft will not be completed by the end of the biennium, so

the department will also be requesting these full-time equivalent (FTE) positions for the 2013-15 biennium.

Ms. Anderson said under Section 9 of the bill draft, the Department of Human Services is requesting:

- One FTE position for a policy trainer position related to medical assistance expansion, with an April 2013 start date;
- One FTE position for a child support enforcement attorney, with a January 2012 start date; and
- Five FTE positions for the Medical Services Division--one eligibility policy position with a January 2012 start date, one program integrity position for medical assistance expansion with a January 2012 start date, one nurse for utilization review as a result of medical assistance expansion with an October 2012 start date, one analyst as a result of medical assistance expansion with a January 2013 start date, and one administrative support position with a January 2013 start date.

Ms. Anderson said the different FTE positions get funds from different sources with different match rates, but all positions require a state match.

Representative Kasper said he thinks the appropriation requests should have been addressed in 2011. Ms. Anderson said these positions had been included in the Governor's budget request, but the Legislative Assembly removed these provisions and directed the department to address these funding needs during this special session.

In response to a question from Representative Keiser, Ms. Anderson said it is unlikely the department would qualify for any federal health benefit exchange funding for these positions because they are related to medical assistance expansion.

Ms. Sharp testified that under Section 10 of the bill draft, she will hire as soon as federal money is available. She said these will be permanent positions, and she would not want to create an appearance of instability by making the positions appear to be temporary.

Ms. Feldner said the FTE position requests under Section 11 of the bill draft would not be hired until the federal funds are received.

Representative Rohr requested information regarding the increases these FTE position requests represent for these agencies.

Ms. Sharp said that under Section 12 of the bill draft, this appropriation will be necessary if any navigator grants are issued in the current biennium.

Representative Keiser said that under Section 13 of the bill draft, he hopes the federal government will allow the state to use these funds for administration of the navigation office. Ms. Ternes said she is not aware of any federal prohibition on using federal funds to administer the navigation program.

Ms. Hauer reviewed her written testimony regarding the Insurance Commissioner's appropriation request.

In response to a question from Representative Kasper, Ms. Ternes said the Insurance Commissioner's request to the Governor requested nine FTE positions and the Governor's actual budget request included five FTE positions. She said during the regular session they were also told to address these matters during the special session.

Representative Kaldor said he does not support the idea of adding limitations on the FTE position requests. He said he does not want to add to the difficulty agencies face in filling these positions. He said FTE position levels are an ongoing issue. He said the solution is if the funding is not available, the positions will likely be cut. He said the Appropriations Committees know this process, so it is not necessary to place limitations on these positions.

Representative Kasper said the addition of 60 FTE positions is an important addition to this bill draft. Additionally, he said, he thinks agencies have a responsibility to let new hires know the positions are based on limited federal funding.

It was moved by Senator Mathern, seconded by Representative Kaldor, and carried on a roll call vote that the bill draft be revised to include the Insurance Commissioner's appropriation request for \$642,350. Representatives Keiser, Clark, Frantsvog, Johnson, Kaldor, Metcalf, and Weisz and Senators Berry, Klein, Lee, and Mathern voted "aye." Representatives Kasper, Nelson, and Rohr voted "nay."

It was moved by Representative Kasper, seconded by Senator Berry, and carried on a voice vote that the bill draft be revised on page 32, line 12, to provide the prohibition applies to a federally administered or state-administered health benefit exchange.

The committee recessed at 6:30 p.m., and committee counsel prepared bill draft revisions in accordance with the committee's directives. The committee reconvened on October 21, at 9:00 a.m. to review the revised bill drafts.

External Review Bill Draft

Senator Lee said she has been in touch with individuals at the Center for Consumer Information and Insurance Oversight. She said the center says between Option 1 and Option 2, the approach taken in Option 2--whereby the Insurance Commissioner selects the independent review organization--is the correct approach.

Senator Lee said the committee appears to have two options--the committee can recommend a bill draft to address the state's external review process or it can do nothing and continue to utilize the federal external review process.

In response to a question from Representative Nelson, Senator Lee said during the next two years the Legislative Assembly can make changes to the external review law as necessary.

In response to a question from Representative Keiser, Senator Lee said she did not address the

Insurance Commissioner's table of 16 points with the Center for Consumer Information and Insurance Oversight. She said she suggests the Insurance Commissioner address any required modifications through the administrative rulemaking process.

Ms. Hauer said if the Insurance Commissioner is faced with rulemaking, there will be problems if the Century Code is contrary to the federal requirements.

In response to a question from Representative Johnson, Mr. St. Aubyn said effective 2014, guaranteed issue policies begin.

It was moved by Senator Lee and seconded by Senator Berry that the bill draft relating to the external review Option 2 be approved and recommended to the Legislative Management.

Ms. Hauer questioned why the bill draft does not define the term "adverse determination," as that term is defined under the external review bill draft based on House Bill No. 1127 as introduced.

Senator Lee said we have three years before we actually need to have the state external review law, so we have time to revise this language as necessary.

In response to a question from Representative Kaldor, Ms. Hauer said North Dakota is in compliance regardless of whether we have a state-administered or a federally administered process.

Senator Berry said he would prefer to address the external review at the state level. He questioned whether it is appropriate to revise the bill draft to include the definition of "adverse determination."

The motion carried on a roll call vote. Representatives Keiser, Clark, Johnson, Kasper, Kreidt, Meier, Metcalf, and Rohr and Senators Berry, Klein, and Lee voted "aye." Representatives Kaldor, and Nelson and Senator Mathern voted "nay."

Revised Health Benefit Exchange Bill Draft

The committee received a revised copy of the health benefit exchange bill draft [[11.0806.05000](#) - red/green copy]. The committee reviewed the revised bill draft section by section.

Chairman Keiser called on Mr. Allen C. Hoberg, Director, Office of Administrative Hearings, for comments regarding the health benefit exchange bill draft. Mr. Hoberg distributed written testimony ([Appendix H](#)).

It was moved by Senator Mathern, seconded by Representative Kreidt, and carried on a voice vote to revise the bill draft in accordance with Mr. Hoberg's written testimony.

Mr. Vastag requested the committee reconsider the actions by which it removed a physician from the Health Benefit Exchange Board.

Senator Lee said under the existing bill draft language there is nothing that would prevent the Governor from appointing a physician.

Senator Berry said he supports revising the bill draft to add a physician member.

Representative Nelson said although a physician's viewpoint is very important, it may be better addressed by participation on the Technical Advisory

Group. He said physicians are very busy, and it will be necessary to have board members who can commit the necessary time and energy.

It was moved by Representative Kreidt, seconded by Senator Klein, and carried on a voice vote that the bill draft be revised to provide the advisory group per diem may not exceed the state rate.

It was moved by Representative Kasper, seconded by Senator Berry, and carried on a voice vote that the bill draft be revised to change all references to "licensed producers" to "agents and brokers."

Ms. Ternes said the Century Code does not license agents and brokers but instead licenses insurance producers and brokers.

Representative Kasper said the board's duty to establish policies and procedures will allow for speed and flexibility.

In response to a question from Senator Lee, Ms. Hauer said the Insurance Commissioner approves forms but does not certify them for the health benefit exchange.

Senator Mathern said he supports the concept of latitude; however, he believes all elements should be addressed through rulemaking. He said perhaps they could be addressed by policy initially but be required to be addressed through rulemaking within a year of establishing the policy.

Senator Klein said rulemaking typically takes six months. He said that once the health benefit exchange is established it may make sense to require rulemaking.

Mr. St. Aubyn said since the federal rules are still in a state of flux, the board will need flexibility.

It was moved by Representative Nelson, seconded by Senator Berry, and carried on a voice vote to revise the bill draft on page 18, line 23, to provide navigation services are to be provided primarily to Indian individuals and groups.

It was moved by Representative Meier, seconded by Representative Johnson, and carried on a voice vote that the bill draft be revised to change all references to "licensed producers" or "agents and brokers" to "licensed insurance producers."

In response to a question from Representative Nelson, Representative Keiser said he expects the health benefit exchange will be funded through user fees and other funding from health insurance carriers.

Committee counsel said the bill draft does not limit the funding source to the health insurance market.

Representative Nelson said he seeks to have the health benefit exchange funded from a broad base, including health insurance carriers inside and outside the health benefit exchange.

Senator Klein said he does not think it is necessary to distinguish between health insurance carriers inside and outside the exchange because that would serve to limit the sources of funding available.

It was moved by Senator Mathern and seconded by Representative Nelson that the bill draft be revised to provide to the extent the board's funding plan is based on the collection of funds that are based on insurance, the funding plan is limited to collecting such funds from hospital, surgical, medical expense, and major medical insurance and the funding plan must be applied universally to plans inside and outside the exchange.

Representative Kasper said he is concerned the board has too much latitude. He said he would prefer the board set the budget and the Insurance Commissioner collect the necessary funds. He said he does not want to create a board with taxing authority.

Representative Johnson said she seeks to allow a combination of funding sources and does not want to limit the board to any single source.

Ms. Ternes said she reads the bill draft language as directing the health benefit exchange to collect the fees or assessments. She said the Insurance Commissioner's duties to collect are set out under the Century Code.

The motion carried on a voice vote.

It was moved by Representative Kasper, seconded by Senator Berry, and carried on a voice vote that the bill draft be revised to provide the board, in consultation with the Insurance Commissioner, may charge assessments.

It was moved by Senator Lee, seconded by Senator Berry, and carried on a voice vote that the bill draft be revised on page 27, line 2, to provide the Information Technology Department may submit proposed legislation to the Legislative Management.

It was moved by Representative Kreidt and seconded by Representative Rohr that Sections 6, 7, 8, and 12 be removed from the health benefit exchange bill draft and that the Legislative Council staff be directed to prepare a new bill draft that contains the substance of Sections 6, 7, 8, and 12.

Representative Kaldor said both bill drafts will have to go to the Appropriations Committees. He said he would not want the division of the bill to compromise either of the bills.

Representative Keiser said he agrees there is a relationship between the two proposed bill drafts; however, it would be possible to pass one bill without the other.

Senator Mathern said he supports keeping a single bill draft.

The motion carried on a roll call vote. Representatives Keiser, Clark, Frantsvog, Johnson, Kasper, Kreidt, Meier, Nelson, and Rohr and Senators Berry, Klein, and Lee voted "aye." Representatives Kaldor and Metcalf and Senator Mathern voted "nay."

Representative Keiser distributed a document ([Appendix I](#)) with proposed revisions to Sections 9 and 10 of the health benefit exchange bill draft.

It was moved by Senator Mathern, seconded by Senator Lee, and carried on a voice vote that Sections 9 and 10 of the health benefit exchange bill draft be revised in accordance with Representative Keiser's proposed revisions.

It was moved by Representative Johnson, seconded by Senator Berry, and carried on a voice vote that the new appropriation bill draft with Sections 6, 7, 8, and 12 of the health benefit exchange bill draft be revised to provide an effective date of November 14, 2011.

It was moved by Representative Nelson, seconded by Senator Mathern, and failed on a roll call vote that the health benefit exchange bill draft be revised to provide the board shall determine and pay compensation to navigators certified by the board who are not covered by grants or who are not state employees out of the operational funds of the exchange as consideration for assisting employers, employees, or consumers in making health coverage decisions through use of the exchange. Representatives Kaldor, Metcalf, and Nelson and Senator Mathern voted "aye." Representatives Keiser, Clark, Frantsvog, Johnson, Kasper, Kreidt, Meier, and Rohr and Senators Berry, Klein, and Lee voted "nay."

It was moved by Representative Johnson, seconded by Representative Meier, and carried on a voice vote that the health benefit exchange bill draft be revised on page 19, line 12, to provide the board, through the navigation office, shall regulate who may charge a fee or receive compensation.

It was moved by Senator Lee and seconded by Representative Kasper that the health benefit exchange bill draft, as amended, be approved and recommended to the Legislative Management.

Senator Mathern said the board composition under this bill draft has gone in a direction where the consumer is not the majority and the consumer members are not identified based on an organizational effort. He said the goal of the health benefit exchange should be getting people insured and he does not think this bill draft accomplishes this goal. Additionally, he said, he thinks to ensure long-term sustainability the state should take a regional approach. He said with all the bill draft's qualifiers, there is an increased likelihood the federal government will not approve the state's health benefit exchange.

Representative Kasper said we are here because Congress met in secret and imposed the ACA on the states. He said the bill draft is designed to keep jobs, and he thinks the bill draft is a fine work product.

Representative Kaldor said he commends the chairman for diligence in effort; however, the establishment of the health benefit exchange is not

about protecting jobs as much as it is about getting people health coverage. He said he is concerned the bill draft's approach to the navigator services creates potential conflicts of interest issues. Overall, he said, the committee has worked hard, but this is not our best product as it leaves much to be desired.

Chairman Keiser thanked the committee members for their honesty and hard work. He said he is proud of the work product, and he is able to distinguish our proposed health benefit exchange plan from the Utah and Massachusetts plans. He said he thinks the state still has the option of pursuing a regional health benefit exchange at a later date, but the timeframe the committee was faced with did not allow it to pursue a regional approach at this time. He said he believes the costs of this state-administered plan will be less than a federally administered plan. He said the idea that small numbers automatically negatively impact the overhead is not necessarily accurate, and New York's plan is proof of this. Finally, he said, he thinks that through the design of the committee's proposed bill draft, the minority party's voice has been heard.

The motion carried on a roll call vote. Representatives Keiser, Clark, Frantsvog, Johnson, Kasper, Kreidt, Meier, and Rohr and Senators Berry, Klein, and Lee voted "aye." Representatives Kaldor, Metcalf, and Nelson and Senator Mathern voted "nay."

It was moved by Representative Kreidt, seconded by Senator Mathern, and carried on a roll call vote that the appropriation bill draft, as amended, be approved and recommended to the Legislative Management. Representatives Keiser, Clark, Frantsvog, Johnson, Kaldor, Kasper, Kreidt, Meier, Metcalf, Nelson, and Rohr and Senators Berry, Klein, Lee, and Mathern voted "aye." No negative votes were cast.

Chairman Keiser said following the special session, the committee will continue with its study charges.

It was moved by Representative Johnson, seconded by Representative Meier, and carried on a voice vote that the chairman and the staff of the Legislative Council be requested to prepare a report and the bill drafts recommended by the committee and to present the report and recommended bill drafts to the Legislative Management.

No further business appearing, Chairman Keiser adjourned the meeting at 12:10 p.m.

Jennifer S. N. Clark
Committee Counsel

ATTACH:9